

AGENDA BILL APPROVAL FORM

Agenda Subject: Resolution No. 4528 New Market Tax Credit Financial Services Agreement		Date: September 15, 2009			
Department: Administration/Finance	Attachments: Resolution & Financial Services Agreement, , Flow Chart & Task List	Budget Impact: \$45,000			
Administrative Recommendation: City Council adopt Resolution No. 4528.					
Background Summary: The City of Auburn (City) intends to fund and construct a community center facility with Parks administrative office space, an activity center/gym and remodel an existing building into a Youth Center at the City's Les Gove Park complex. The City is qualified for and intends to use "new market tax credits" (NMTC) financing as one revenue component for this capital improvement project. Due to the complexity of new market tax credit transactions, it is necessary for the City to retain financial consultant services to conduct an assessment for the City as to how to navigate the City's NMTC financing initiative, and coordinate/manage the NMTC financing process in a manner that will result in controlling transaction fees, legal fees and closing costs. O4.4.13; F6.17					
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;"> Reviewed by Council & Committees: <input type="checkbox"/> Arts Commission <input type="checkbox"/> Airport <input type="checkbox"/> Hearing Examiner <input type="checkbox"/> Human Services <input type="checkbox"/> Park Board <input type="checkbox"/> Planning Comm. </td> <td style="width: 33%; vertical-align: top;"> COUNCIL COMMITTEES: <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Municipal Serv. <input type="checkbox"/> Planning & CD <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other _____ </td> <td style="width: 33%; vertical-align: top;"> Reviewed by Departments & Divisions: <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Building <input type="checkbox"/> Cemetery <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Fire <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Public Works <input type="checkbox"/> Information Services </div> <div> <input type="checkbox"/> M&O <input type="checkbox"/> Mayor <input type="checkbox"/> Parks <input type="checkbox"/> Planning <input type="checkbox"/> Police <input type="checkbox"/> Human Resources </div> </div> </td> </tr> </table>			Reviewed by Council & Committees: <input type="checkbox"/> Arts Commission <input type="checkbox"/> Airport <input type="checkbox"/> Hearing Examiner <input type="checkbox"/> Human Services <input type="checkbox"/> Park Board <input type="checkbox"/> Planning Comm.	COUNCIL COMMITTEES: <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Municipal Serv. <input type="checkbox"/> Planning & CD <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other _____	Reviewed by Departments & Divisions: <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Building <input type="checkbox"/> Cemetery <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Fire <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Public Works <input type="checkbox"/> Information Services </div> <div> <input type="checkbox"/> M&O <input type="checkbox"/> Mayor <input type="checkbox"/> Parks <input type="checkbox"/> Planning <input type="checkbox"/> Police <input type="checkbox"/> Human Resources </div> </div>
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Action: Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Call for Public Hearing ____/____/____ Referred to _____ Until ____/____/____ Tabled _____ Until ____/____/____					
Councilmember: Backus		Staff: Coleman/Wilson			
Meeting Date: September 21, 2009		Item Number: VIII.B.3			

RESOLUTION NO. 4 5 2 8

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO
SIGN A FINANCIAL SERVICES AGREEMENT WITH
BRECKENRIDGE CONSULTING SERVICES, INC.

WHEREAS, the City of Auburn (City) intends to fund and construct a community center facility with Parks administrative office space, an activity center/gym, and remodel an existing building into a Youth Center at the City's Les Gove Park complex; and

WHEREAS, the City is qualified for and intends to use "new market tax credits" (NMTC) financing as one revenue component for this capital improvement project; and

WHEREAS, due to the complexity of new market tax credit transactions, the City needs to retain financial consulting services to conduct an assessment for the City as to how to navigate the City's NMTC financing initiative and coordinate/manage the NMTC financing process in a manner that will result in controlling transaction fees, legal fees and financial costs; and

WHEREAS, the City advertised and solicited proposals from qualified financial consultants and interviewed two companies with new market tax credit financial consulting experience; and

WHEREAS, it has been determined that Breckenridge Consulting Services (Seattle, WA) best meets the City's financial service needs and scope of work for the capital funding of this project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN,
WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Implementation. The Mayor of the City of Auburn is hereby authorized to sign the Financial Services Agreement with Breckenridge Consulting Services in substantial conformity with the Agreement identified and attached hereto as Exhibit "A".

Section 3. Effective Date. This Resolution shall take effect and be in full force upon passage and signatures hereon.

DATED and SIGNED THIS _____ DAY OF _____, 2009.

CITY OF AUBURN

ATTEST:

PETER B. LEWIS,
MAYOR

Danielle E. Daskam,
City Clerk

APPROVED AS TO FORM:



Daniel B. Heid,
City Attorney

CITY OF AUBURN AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT made and entered into on this _____ day of _____, 2009, by and between the City of Auburn, a municipal corporation of the State of Washington, hereinafter referred to as "City" and Breckenridge Consulting Services, hereinafter referred to as the "Consultant."

WITNESSETH:

WHEREAS, the City is engaged in the financing and construction of a new community center and activity center project (Project), and is in need of services of individuals, employees or firms for "new market tax credits" financial consulting work on the Project; and,

WHEREAS, the City desires to retain the Consultant to provide certain services in connection with the City's work on the Project; and,

WHEREAS, the Consultant is qualified and able to provide consulting services in connection with the City's needs for the above-described work/project, and is willing and agreeable to provide such services upon the terms and conditions herein contained.

NOW, THEREFORE, the parties hereto agree as follows:

1. Scope of Services.

The Consultant agrees to perform in a good and professional manner the tasks described on Exhibit "A" attached hereto and incorporated herein by this reference. (The tasks described on Exhibit "A" shall be individually referred to as a "task," and collectively referred to as the "services.") The Consultant shall perform the services as an independent contractor and shall not be deemed, by virtue of this Agreement and the performance thereof, to have entered into any partnership, joint venture, employment or other relationship with the City.

2. Additional Services.

From time to time hereafter, the parties hereto may agree to the performance by the Consultant of additional services with respect to related work or projects. Any such agreement(s) shall be set forth in writing and shall be executed by the respective parties prior to the Consultant's performance of the services there under, except as may be provided to the contrary in Section 3 of this Agreement. Upon proper completion and execution of an addendum (agreement for additional services), such addendum shall be incorporated into this Agreement and shall have the same force and effect as if the terms of such addendum were a part of this Agreement as originally executed. The performance of services pursuant to an addendum shall be subject to the terms and conditions of this Agreement except where the addendum provides to the contrary, in which case the terms and conditions of any such addendum shall control. In all other respects, any addendum shall supplement and be construed in accordance with the terms and conditions of this Agreement.

3. Performance of Additional Services Prior to Execution of an Addendum.
The parties hereby agree that situations may arise in which services other than those described on Exhibit "A" are desired by the City and the time period for the completion of such services makes the execution of addendum impractical prior to the commencement of the Consultant's performance of the requested services. The Consultant hereby agrees that it shall perform such services upon the oral request of an authorized representative of the City pending execution of an addendum, at a rate of compensation to be agreed to in connection therewith. The invoice procedure for any such additional services shall be as described in Section 7 of this Agreement.
4. Consultant's Representations.
The Consultant hereby represents and warrants that he has all necessary licenses and certifications to perform the services provided for herein, and is qualified to perform such services.
5. City's Responsibilities.
The City shall do the following in a timely manner so as not to delay the services of the Consultant:
 - a. Designate a person to act as the City's representative with respect to the services. The City's designee shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the services.
 - b. Furnish the Consultant with all information, criteria, objectives, schedules and standards for the project and the services provided for herein.
 - c. Arrange for access to the property or facilities as required for the Consultant to perform the services provided for herein.
 - d. Examine and evaluate all studies, reports, memoranda, plans, sketches, and other documents prepared by the Consultant and render decisions regarding such documents in a timely manner to prevent delay of the services.
6. Acceptable Standards.
The Consultant shall be responsible to provide, in connection with the services contemplated in this Agreement, work product and services of a quality and professional standard acceptable to the City.
7. Compensation.
As compensation for the Consultant's performance of the services provided for herein, the City shall pay the Consultant the fees and costs specified on Exhibit "B" attached hereto and made a part hereof (or as specified in an addendum). The Consultant shall submit to the City an invoice or statement of time spent on tasks included in the scope of work provided herein, and the City shall process the invoice or statement in the next billing/claim cycle following receipt of the invoice or statement, and shall remit payment to the Consultant thereafter in the normal course, subject to any conditions or provisions in this Agreement or addendum.
8. Term of Agreement.
The Term of this Agreement shall commence on the date hereof or on the _____ day of September, 2009 and shall terminate on the _____ day of April, 2010, or upon

completion of the performance of the scope of work provided herein, unless otherwise agreed to in writing by the parties.

9. Ownership and Use of Documents.

All documents, reports, memoranda, diagrams, sketches, plans, surveys, design calculations, working drawings and any other materials created or otherwise prepared by the Consultant as part of his performance of this Agreement (the "Work Products") shall be owned by and become the property of the City, and may be used by the City for any purpose beneficial to the City.

10. Records Inspection and Audit.

All compensation payments shall be subject to the adjustments for any amounts found upon audit or otherwise to have been improperly invoiced, and all records and books of accounts pertaining to any work performed under this Agreement shall be subject to inspection and audit by the City for a period of up to three (3) years from the final payment for work performed under this Agreement.

11. Continuation of Performance.

In the event that any dispute or conflict arises between the parties while this Contract is in effect, the Consultant agrees that, notwithstanding such dispute or conflict, the Consultant shall continue to make a good faith effort to cooperate and continue work toward successful completion of assigned duties and responsibilities.

12. Administration of Agreement.

This Agreement shall be administered Paul Breckenridge, on behalf of the Consultant, and by the Mayor of the City, or designee, on behalf of the City. Any written notices required by the terms of this Agreement shall be served on or mailed to the following addresses:

City of Auburn

Finance Department, City of Auburn
25 West Main
Auburn, WA 98001-4998
(253) 931-3000 FAX (253) 931-3053

Consultant

Breckenridge Consulting Services
229 Broadway E., Suite 21
Seattle, WA 98102
(206) 324-0229

13. Notices.

All notices or communications permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or deposited in the United States mail, postage prepaid, for mailing by certified mail, return receipt requested, and addressed, if to a party of this Agreement, to the address for the party set forth above, or if to a person not a party to this Agreement, to the address designated by a party to this Agreement in the foregoing manner.

Any party may change his, her or its address by giving notice in writing, stating his, her or its new address, to any other party, all pursuant to the procedure set forth in this section of the Agreement.

14. Insurance.

The Consultant shall be responsible for maintaining, during the term of this Agreement and at its sole cost and expense, the types of insurance coverages and in the amounts described below. The Consultant shall furnish evidence, satisfactory to the City, of all such policies. During the term hereof, the Consultant shall take out and maintain in full force and effect the following insurance policies:

- a. Comprehensive public liability insurance, including automobile and property damage, insuring the City and the Consultant against loss or liability for damages for personal injury, death or property damage arising out of or in connection with the performance by the Consultant of its obligations hereunder, with minimum liability limits of \$1,000,000 combined single limit for personal injury, death or property damage in any one occurrence.

15. Indemnification.

The Consultant shall indemnify and hold harmless the City and its officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of the negligent act or omission of the Consultant, its officers, agents, employees, or any of them relating to or arising out of the performance of this Agreement. If a final judgment is rendered against the City, its officers, agents, employees and/or any of them, or jointly against the City and the Consultant and their respective officers, agents and employees, or any of them, the Consultant shall satisfy the same to the extent that such judgment was due to the Consultant's negligent acts or omissions.

16. Assignment.

Neither party to this Agreement shall assign any right or obligation hereunder in whole or in part, without the prior written consent of the other party hereto. No assignment or transfer of any interest under this Agreement shall be deemed to release the assignor from any liability or obligation under this Agreement, or to cause any such liability or obligation to be reduced to a secondary liability or obligation.

17. Amendment, Modification or Waiver.

No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound, or such party's or parties' duly authorized representative(s) and specifying with particularity the nature and extent of such amendment, modification or waiver. Any waiver by any party of any default of the other party shall not effect or impair any right arising from any subsequent default.

Nothing herein shall limit the remedies or rights of the parties hereto under and pursuant to this Agreement.

18. Termination and Suspension.

Either party may terminate this Agreement upon written notice to the other party if the other party fails substantially to perform in accordance with the terms of this Agreement through no fault of the party terminating the Agreement.

The City may terminate this Agreement upon not less than seven (7) days written notice to the Consultant if the services provided for herein are no longer needed from the Consultant.

If this Agreement is terminated through no fault of the Consultant, the Consultant shall be compensated for services performed prior to termination in accordance with the rate of compensation provided in Exhibit "B" hereof.

19. Parties in Interest.

This Agreement shall be binding upon, and the benefits and obligations provided for herein shall inure to and bind, the parties hereto and their respective successors and assigns, provided that this section shall not be deemed to permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the parties hereto and it does not create a contractual relationship with or exist for the benefit of any third party, including contractors, sub-contractors and their sureties.

20. Costs to Prevailing Party.

In the event of such litigation or other legal action, to enforce any rights, responsibilities or obligations under this Agreement, the prevailing parties shall be entitled to receive its reasonable costs and attorney's fees.

21. Applicable Law.

This Agreement and the rights of the parties hereunder shall be governed by the interpreted in accordance with the laws of the State of Washington and venue for any action hereunder shall be in of the county in Washington State in which the property or project is located, and if not site specific, then in King County, Washington; provided, however, that it is agreed and understood that any applicable statute of limitation shall commence no later than the substantial completion by the Consultant of the services.

22. Captions, Headings and Titles.

All captions, headings or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and shall not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or sections to which they apply. As used herein, where appropriate, the singular shall include the plural and vice versa and masculine, feminine and neuter expressions shall be interchangeable. Interpretation or construction of this Agreement shall not be affected by any determination as to who is the drafter of this Agreement, this Agreement having been drafted by mutual agreement of the parties.

23. Severable Provisions.

Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

24. Entire Agreement.

This Agreement contains the entire understanding of the parties hereto in respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter.

25. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective the day and year first set forth above.

CITY OF AUBURN

CONSULTANT

Peter B. Lewis, Mayor

Name: _____

Title: _____

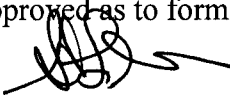
Attest:

Danielle E. Daskam City Clerk

Name: _____

Title: _____

Approved as to form:



Daniel B. Heid, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

ON THIS _____ day of _____, 200____, before me, personally appeared _____ and _____, to me known to be the _____ and _____ of the Contractor, the party(ies) who executed - *the corporation/company that executed the within and foregoing instrument*, and acknowledged said instrument to be his/her/their *the* free and voluntary act and deed *of said corporation/company*, for the uses and purposes therein mentioned, *and on oath stated that they were authorized to execute said instrument.*

GIVEN under my hand and official seal this _____ day of _____, 200____.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission Expires: _____

EXHIBIT "A"

SCOPE OF WORK

The City of Auburn (City) intends to fund and construct a community center facility with Parks administrative office space, an activity center/gym and remodel an existing building into a Youth Center at the City's Les Gove Park complex. The City is qualified for and intends to use "new market tax credits" (NMTC) financing as one revenue component for this capital improvement project. The total project investment fund is estimated to be approximately \$15 million.

The purpose for the "consultant work" is to conduct an assessment for the City as to how to navigate the City's NMTC financing initiative, assist the City in maximizing the financial benefits of a NMTC transaction, and coordinate/manage the NMTC financing process in a manner that will result in controlling financial and legal costs.

The specific duties of the financial consultant would include the following services:

- Assess all aspects of existing and proposed funding sources that are committed to the Les Gove Park Youth Center (the "Project"), and identify a NMTC financial structure that will optimize the net NMTC subsidy to the project.
- Create Project financial projections that reflect the identified NMTC structure, and serve as the basis for expanded projections that will be provided by the Project Accountant.
- Identify the optimal NMTC financing team, which will involve an internal assessment of terms and conditions currently being offered by the various Community Development Entities ("CDEs") and NMTC Investors that could potentially have interest in the Project.
- Assemble the NMTC financing team, which will involve generating marketing materials, promoting the Project to targeted CDEs and Investors, working through CDE and Investor intake/screening processes, and negotiating term sheets with the various members of the financing team.
- Maintain and update the Project level financial projections to reflect the expanded projections that will be provided by the Project Accountant, and serve as liaison between the City of Auburn and the Project Accountant.
- Manage the City of Auburn's NMTC financial closing responsibilities (working in conjunction with City of Auburn counsel and staff).
- Review closing documentation to ensure that business points negotiated in the term sheets are reflected in the closing documents.
- Provide general NMTC guidance to City of Auburn staff.
- Provide financial consulting support to the Auburn Finance Department after closing of the NMTC transaction to ensure reporting, auditing and compliance requirements are being met.

EXHIBIT "B"

PAYMENT

1. Consultant shall account for and be paid by the City on an hourly basis at a rate of \$150/hr. in an amount not to exceed Forty Five Thousand Dollars (\$45,000) to complete the scope of work described in Exhibit "A".
2. The consultant may submit vouchers to the City once per month during the progress of the work for partial payment for project completed to date. Such vouchers will be checked by the City, and upon approval thereof, payment will be made to the Consultant in the amount approved.
3. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion and closing of the new market tax credit transaction and its acceptance by the City.

Community/Activity Centers Capital Project Funding - Task List

<u>Date</u>	<u>Task</u>	<u>Responsibility/Action</u>
Aug. 28	Meeting w/ HUD officials to discuss Sec. 108 Loan	Staff
Sept. 8	Financial consultant submits NMTC proposals/statement of qualifications	Staff
Sept 13	Interview financial consultants	Staff
Sept. 14	Negotiate financial consultant agreement	Staff
Sept. 21	Council approves financial consultant agreement	Council approval
Sept. 29	Meeting w/ Consultant & Legal Counsel - discuss NMTC structure	Counsel/staff/consultant
Oct. 5	NMTC funding concept finalized	Counsel/staff/consultant
Oct. 12	Complete CDBG plan for use of funds for HUD Sec. 108 loan	Staff
Oct. 12	Letter from Legal Counsel re NMTC structure to State AG/Auditor drafted	Legal counsel
Oct. 19	Conduct first public hearing on use of CDBG funds for HUD loan	Council - public hearing
Oct. 19	Meeting w/ State AG/Auditor to discuss NMTC structure	Legal Counsel
Oct. 23	Submit Application for HUD Sec. 108 loan	Staff
Oct. 26	Work out outstanding NMTC issues w/ State AG/Auditor	Legal counsel
Nov. 2	Final Decision on NMTC funding structure	Decision to proceed
Nov. 2	Conduct public hearing on Human Services Comprehensive Plan, Second public hearing on use of CDBG funds for Sec. 108 loan	Council - public hearing
Nov. 3	Commence NMTC funding process	Consultant/Staff/Legal
Nov. 9	Initiate negotiations w/ King County Housing Authority re use of facilities	Staff
Nov. 16	Present to Counsel 2010 Capital Budget for Community/Activity Centers	Public Hearing - Council
Nov. 30	Complete negotiations w/ King County Boy's/Girl's Club, draft agreement approved by KCBGC	KCBG approval
Dec. 7	Adopt 2010 Budget Amendment - Community/Activity Centers	Council approval
Dec. 21	Capital funding agreement w/ KCBGC approved by City	Council approval
Jan. 19	Agreement w/ King County Housing Authority re use of facilities	Council approval
Feb. 1	Notice from HUD on loan application approval	HUD approval
Feb. 15	Complete financing of HUD loan w/ Council approval of loan documents	Council approval
Mar. 1	Complete NMTC transaction w/ approval of final funding documents	Council approval
Mar. 15	Obtain bids for Community and Activity Centers	QALICB/staff
April 5	Award bids	QALICB approval
April 26	Commence Construction	Contractor